UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555(JMP)

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In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 27, 2010

10:07 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Debtors' Twenty-Eighth Omnibus Objection to Claims (Valued Derivative Claims)

HEARING re Debtors' Thirty-Fifth Omnibus Objection to Claims (Valued Derivative Claims)

HEARING re Debtors' Thirty-Sixth Omnibus Objection to Claims (Failure to Submit Guarantee Questionnaire Claims)

HEARING re Debtors' Thirty-Seventh Omnibus Objection to Claims (No Liability Claims)

HEARING re Debtors' Thirty-Eighth Omnibus Objection to Claims (Amended and Superseded Claims)

HEARING re Debtors' Fortieth Omnibus Objection to Claims (Late-Filed Claims)

HEARING re Debtors' Forty-First Omnibus Objection to Claims (Late-Filed Claims)

HEARING re Debtors' Forty-Second Omnibus Objection to Claims (Late-Filed Lehman Programs Securities Claims)

HEARING re Debtors' Forty-Third Omnibus Objection to Claims (Late-Filed Lehman Programs Securities Claims)

HEARING re Debtors' Forty-Fourth Omnibus Objection to Claims (Settled Derivative Claims)

HEARING re Debtors' Twenty-Ninth Omnibus Objection to Claims (No Blocking Number LPS Claims)

HEARING re Debtors' Thirty-Ninth Omnibus Objection to Claims (Duplicative Claims)

HEARING re Debtors' Objection to Proofs of Claim Filed By William Kuntz III (Claim Nos. 33550, 33551, 33552, 35121, and 35430)

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P R O C E E D I N G S

THE COURT: Please be seated. Good morning.

MR. WAISMAN: Good morning, Your Honor. Shai Waisman, Weil Gotshal & Manges on behalf of Lehman Brothers Holdings and its affiliate debtors. Your Honor, we're here this morning on the hearing on our objection to claims. A rather lengthy agenda was filed yesterday afternoon. An amended agenda was filed last night to reflect a few matters that were being adjourned. The length of the agenda really reflects a number of matters being adjourned to future hearings and don't expect a lengthy hearing today. If Your Honor is okay with it, we would proceed in the manner in which the matters are set forth in the agenda.

THE COURT: That's fine.

MR. WAISMAN: The first two matters, Your Honor, debtors' twenty-eighth and thirty-fifth objections to claims will be handled by my partner, Penny Reid, who has had primary responsibility for derivative related claims. And I'd like to introduce Ms. Reid to the Court this morning. From there, Ms. Eckols, who the Court has met, will handle basically the balance of the matters this morning, uncontested matters 3 through 10 and contested matters 1 and 2. And I will clean up with the third contested matter on the agenda and that would be the conclusion of the hearing this morning.

THE COURT: All right.

MR. WAISMAN: Thank you.

THE COURT: Good morning.

MS. REID: Good morning, Your Honor. My name is Penny Reid with Weil Gotshal on behalf of the debtors. And I'm going to address the twenty-eighth and thirty-fifth omni objections.

With respect to the twenty-eighth omnibus objection, Your Honor, we'll recall that we had adjourned three of the claims in that matter to today's hearing to try to resolve them. We have been successful. The debtors have been successful in resolving one of those matters with the U.S. AGBank. And we have a proposed supplemental order reducing this claim to the settled amount.

The other two matters that we adjourned from the twenty-eighth omni are still being negotiated and we are respectfully requesting the Court to adjourn those two matters until the November 10th hearing to allow us a little bit further time. But we are in negotiations with them. It's Investcorp and Rutland Hospital.

THE COURT: Okay.

MS. REID: With respect to the thirty-fifth omni objection, Your Honor, the debtors are seeking to reduce and allow six claims that relate to three counterparties who did not file any response to the thirty-fifth omni objection. Specifically, we are seeking to reduce the claim from the city of Tacoma from 509,600 dollars to 135,596 dollars; the claim

from De Longhi Capital Services from 1,262,407 dollars to 1,186,071 dollars; and the claim of Poste Italiane S.P.A. from 994,922 dollars to 939,545 dollars.

As to the remaining fourteen claims, which relate to seven counterparties, the debtors are respectfully requesting this Court to adjourn the hearing until January 20th, 2011 claims hearing date which will allow the debtors to try and resolve these matters amicably with the respondents. And we have an order both reducing the claims that were responded to as well as adjourning the other seven claims.

THE COURT: All right. That's fine.

MS. REID: Thank you, Your Honor.

MS. ECKOLS: Good morning, Your Honor. Erin Eckols on behalf of the debtors. I will be covering agenda items 3 through 12 which cover omnibus objections 36 through 44 as well as the carryover items for omnibus objection 29.

The debtors are proceeding today largely on an uncontested basis. The only contested matters with respect to the omnibus objections are the carryover items from omni 29 and one unresolved response to omni 39.

Your Honor, the debtors are continuing to diligently process the tens of thousands of claims filed in these Chapter 11 cases. On September 18th, the debtors filed omnibus objections 36 through 44 seeking to disallow and expunge over 1800 claims and seeking to reduce and reclassify an additional

fifty-three.

For each of these omnis, Your Honor, the debtors continued their practice of prominently identifying a specific debtor's counsel that claimants could call with any questions with any questions they may have. And debtors made sure to reach out to every claimant or counsel that contacted them with questions.

Because omnis 36 through 38 and 40 to 44 are proceeding uncontested today, I intend to move through each one of these with a very brief description and then move on to the contested matters.

Your Honor, agenda item number 3, omnibus objection 36, this omnibus objection seeks to disallow and expunge claims for failure to comply with the bar date order. Specifically, the bar date order required parties asserting guaranty claims to complete a guaranty questionnaire. The holders of the claims on omnibus objection 36 did not complete the required questionnaire and none of them filed responses. Thus, the debtors are proceeding uncontested with respect to that omni and request that the Court grant omnibus objection number 38 (sic).

THE COURT: It's granted.

MS. ECKOLS: With respect to agenda item number 4, debtors' omnibus objection to claims number 37, no liability claims, this omnibus objection seeks to disallow and expunge

that are asserted against nondebtor entities but were filed in these Chapter 11 cases. Therefore, they are not appropriately filed in these Chapter 11 cases. Again, this matter is proceeding on an uncontested basis. The responses received have been adjourned. And therefore, we ask the Court to grant omnibus objection number 37.

THE COURT: Omnibus objection number 37 is granted.

MS. ECKOLS: Agenda item number 5 is debtors' omnibus to claims number 38. This omnibus objection is to eliminate claims that have been amended or superseded by other claims on the claims register. There have been two changes to language on the order since the proposed order was filed and these changes were made of the request of counsel to resolve some questions or concerns that they had raised. One of those changes was to clarify that not only the surviving claim to the extent it appropriately amended a claim shall be deemed timely filed for that. That extends to any amended derivative and guaranty questionnaires and supporting documentation that went with those surviving claims.

The other change that was requested by counsel and debtors agreed to was to clarify that while debtors reserve the right to object to any of the surviving claims, the debtors will not object to a surviving claim that has been allowed by order of the Court or by a signed settlement or termination agreement authorized by the Court.

So those have been the only two changes to the order. We're proceeding therefore on an uncontested basis and request that the Court grant omnibus objection number 38.

THE COURT: Omnibus objection number 38 is granted.

MS. ECKOLS: Your Honor, agenda items 6 through 9 are omnibus objections 40 through 43. These are the omnibus objections for late-filed claims and late-filed Lehman program securities claims. Because these omnibus objections are very similar, I was going to discuss them altogether unless Your Honor has an objection to me doing that.

THE COURT: No. That's fine.

MS. ECKOLS: Okay. On omnibus objections 40 and 41, these are the omnibus objections to disallow and expunge claims that were filed after the September 22nd, 2009 bar date. Omnibus objections 42 and 43 are to disallow and expunge Lehman program securities claims that were not filed by the November 2nd, 2009 bar date. There are a total of over 1500 claims on these omnibus objections. The debtors are proceeding on an uncontested basis having adjourned nearly all of the responses that were received. And therefore, the debtors respectfully request that the Court grant omnibus objections 40 through 43.

THE COURT: Those are all granted.

MS. ECKOLS: Thank you. Agenda item number 10 which is debtors' forty-fourth omnibus objection to claims, this is a consensual omnibus objection in order to reduce, reclassify and

allow claims that were settled pursuant to assigned termination agreements. These claims were where parties had reached an agreement with the debtors with respect to the claim amount of classification that is not reflected on the group of claims. And omnibus objection is simply seeking to modify those claims to conform to the parties' agreement. Therefore, the debtors respectfully request that the Court grant omnibus objection 44.

THE COURT: Omnibus objection 44 is granted.

MS. ECKOLS: Your Honor, that wraps up the uncontested claims matters. And moving on to the contested claim matters, agenda item number 11 which is some carryover items from debtors' twenty-ninth omnibus objection to claims.

As Your Honor may recall, omnibus objection 29 sought to disallow and expunge Lehman program securities claims that violated the bar date order because they did not include the required blocking number. At the September 1 claims hearing, Your Honor granted the omnibus objection with respect to the uncontested claims and today we are taking up the three contested claims.

The responses or the parties contesting are RBC Capital Markets, the August '86 Trust and Aspecta Assurances International. Each of these respondents failed to include the required blocking number with their proof of claim and thus violated the bar date order. The debtors ask that this Court enforce the blocking number requirement uniformally and expunge

the noncompliant claims.

The blocking number requirement is critical and needs to be enforced in order for debtors to effectively reconcile the Lehman program securities claims. The bar date order established specific procedures for the filing of those claims because of the unique characteristic of those securities. Specifically, the program securities did not have an indenture trustee that could file a global claim on behalf of the individual holders of those securities. So the individual holders would have to file their own claims.

This presented serious issues as far as reconciliation of the claims because the debtors would not be able to confirm ownership or amount of a particular security. A security could have been traded every day for thirty days prior to the bar date and each holder could have filed the claim risking duplicative and/or excessive distributions. The blocking number requirement was specifically designed to address this problem. The blocking number, when issued, would confirm ownership and amount of a security as of a certain date and, once it was issued, trading for that particular security was frozen through the securities program bar date. The blocking number requirement was two part. A claimant had to actually obtain the blocking number and then include it with their timely filed proof of claim. That again, the blocking number plays a critical role for reconciliation of these claims and

significantly reduces the burden on debtors of reconciling these claims.

THE COURT: Can I break in for a minute --

MS. ECKOLS: Sure.

THE COURT: -- and just ask a very basic question about how one obtains blocking numbers. Let's just say that you're the August '86 Trust to pick one that happens to be up today. And you're trying to comply faithfully with the requirements of the order establishing procedures for filing proofs of claim. And you know that there is a need to obtain a blocking number. Procedurally, how would you go about doing that?

MS. ECKOLS: Your Honor, the claimant would need to reach out to the applicable clearing agency, Euroclear or Clearstream, and they would issue the blocking number for the claimant.

THE COURT: And once that blocking number is issued, that becomes, in effect, the tracking number for the claim?

MS. ECKOLS: Yes, Your Honor. That is correct.

THE COURT: Okay.

MS. ECKOLS: Allowing parties to circumvent the blocking number requirement eviscerates the benefits that it was intended to have and will make it incredibly difficult, if not impossible, for the debtors to reconcile those claims. And there are a large number of Lehman program securities claims to

reconcile. There are over approximately 31,000 Lehman program securities claims which is almost half of the amount of claims in total filed in these Chapter 11 cases. Again, debtors believe that the blocking requirement must be uniformally and strictly enforced.

The blocking number requirement was expressly set forth in the bar date order. It specifically stated that claimants had to obtain the blocking number and include it on their proof of claim. This requirement was also specifically set forth in the securities program bar date notice and, in fact, that bar date notice had a whole section that said "special note regarding blocking numbers". That was in bold. And that was on the court-approved bar date notice.

The proof of claim form that this Court approved for Lehman program securities claim also expressly said that the claimant had to obtain had to obtain the blocking number and had a space for them to put it on there. The bar date notice was widely disseminated. It was given to the clearing agencies and it was also published in twenty-six papers in eighteen countries, ten languages plus seven local dialects.

Now the respondents do not dispute that they failed to comply with one or both parts of the blocking number requirement. And the responses do not dispute that they received notice of the blocking number requirement or that notice was somehow deficient. The responses do not dispute

that the requirement to obtain the blocking number and put it on the proof of claims was clear. Instead, the responses assert that they should be treated differently from other Lehman program securities claimants that had to comply with the bar date order's procedures.

Now I did want to alert Your Honor to the fact that the August '86 Trust did file an affidavit on Monday afternoon that did, for the first time, assert that they had no notice of this requirement and that they didn't receive proper notice of it. So it appears as though the August '86 Trust in response to debtors' reply has changed position a little bit. Again, debtors just wanted to notify the Court of this. We believe it is an impermissible surreply but we did want you to know that August '86 Trust was raising this now kind of belatedly.

The reasons provided by each respondent are vague and unsubstantiated. They cite a mistake or inadvertence of some sort. But whatever the excuse, the respondents all seek to justify their noncompliance with a no harm no foul argument that doesn't withstand scrutiny.

Specifically, with respect to Aspecta. Aspecta failed to obtain a blocking number altogether but claims no harm no foul because it says it held the securities "at all relevant times". There is no explanation of what "all relevant times" actually means and no support other than two unsubstantiated documents that purport to establish ownership of the securities

as of September 2010 which, obviously, is nearly a year after the applicable bar date. So even if Aspecta had produced admissible evidence establishing ownership of the securities as of September 2010, which it did not, this does not accomplish the goals of the blocking number requirement or render the blocking number unnecessary. It does not confirm ownership prior to bar date. It does not prevent others from claiming those same securities. And so, the reconciliation issues that the blocking number requirement specifically sought to avoid are present here. Because Aspecta utterly failed to comply with the blocking number procedures, its claim should be expunged.

The no harm no foul arguments asserted by RBC and the August '86 Trust simply miss the point. RBC and the August '86 Trust assert that the failure to include a blocking number with their claim should be excused because they have the number and simply didn't give it to the debtors. However, the blocking number requirement is two-fold. The claimant had to obtain the blocking number and actually put it on their timely filed proof of claim. Obtaining a blocking number but not providing it to the debtors does not allow the debtors to effectively process and reconcile these 31,000 program securities claims.

Moreover, the harm to the debtors in making exceptions to the blocking number requirement, whether because the claimant forgot to include it with their proof of claim or

simply did not obtain one, the harm is that it encourages other claimants to come and seek similar exceptions. The debtors implemented the blocking number procedures because it knew that the volume of the Lehman program securities claims was going to be large and the reconciliation was going to be difficult. The blocking number was designed to avoid a parade of claimants seeking to engage in contested hearings, possible lengthy evidentiary hearings, regarding whether or not they are the valid holder as a Lehman program securities claim. In short, the contested hearing that debtors are engaging in right now with the possibility of hundreds more to follow if leniency is granted demonstrates the harm to the debtors and is precisely why the blocking number requirement should be strictly enforced.

THE COURT: Can I break in and ask you a question --

MS. ECKOLS: Of course.

THE COURT: -- about that? My understanding of how this works procedurally is that the blocking number is to be included on the filed claim and it's used by those who are processing claims for the debtor in determining how to allow claims based upon Lehman program securities. Assuming that a claimant has obtained a blocking number and fails for whatever reason to include that number on the documents that are being processed but later cures that defect by providing what I'll call an amended claim saying I'm sorry, I forgot, how is the

debtor prejudiced if at all?

MS. ECKOLS: Your Honor, it's really the slippery slope problem and the encouraging other parties who did not, for whatever reason, comply with the blocking number requirement to come in and seek exceptions.

THE COURT: Yes. But if the party who was seeking the exception has a blocking number that doesn't create an exception for a party that failed to obtain a blocking number, does it?

MR. WAISMAN: If I may, Your Honor. And this is the reason we -- Your Honor's very question is the reason that we are here on this objection and discussing it with the Court. The internal fear and concern is that if we are to say to those folks that call and say I actually complied. I called my broker or Euroclear or Clearstream obtaining my blocking number. I just forgot to include it. Here it is, no harm no foul. The concern is if we allow those in, we're then going to have the next variation, of which we're hearing about already which is, look, I didn't get the blocking number but I will provide an affidavit and a witness in court saying I held it in the years before the bar date, at the bar date, I still hold it today. So, in essence, you're blocking number requirement is met, no harm no foul. And we start to go down this slope where the magnitude of the claims here, 30,000 -- approximately 30,000 people got notice, understood the notice complied.

There's obviously, as with the entirety of this bar date process, a large number of claimants that didn't comply. And if we made exception now, we are concerned that we are just allowing additional variations on the exception that are going to bog us down in the claims reconciliation process at this late date with a plan on file and bog down the process here in court with a magnitude of claims that have not yet really been seen in the Chapter 11 cases. So that's -- those are the reasons we are pressing the objections.

THE COURT: Okay.

MS. ECKOLS: Your Honor, just in conclusion, the debtors believe that the blocking number requirement -- clear notice was given. These respondents didn't comply and respectfully request that the Court overrule the responses and grant the twenty-ninth omnibus objection as to the RBC, the August '86 Trust and the Aspecta claims.

THE COURT: Okay. I see counsel in the room so I'll hear what they have to say. Mr. Friedman, you're number one.

MR. FRIEDMAN: Thank you, Your Honor. Jeff Friedman of KattenMuchinRosenman for RBC Capital Markets, Your Honor. According to what Ms. Eckols just said, the crux of the matter this morning is whether the bar date should be strictly and rigidly enforced based on a slippery slope argument that RBC is allowed to amend its claim and add a blocking number that it timely and properly obtained but merely failed to write down on

the proof of claim form, everyone will want to use that excuse.

I don't know what the magnitude of claims are that fit into that category. I do know that this omnibus objection before the Court, the twenty-ninth omnibus objection, objected to eleven claims apparently, a number of which didn't obtain blocking numbers.

It seems to me, Your Honor, that the issue is not simply the rigid enforcement of the Court's order. Every Court that enters a bar date order, Your Honor -- it's not only in this case; it's in other cases -- other judges in this court, bankruptcy judges generally expect their bar date orders will be complied with. And the penalty for doing so, particularly if you're late, that your claim may be disallowed in its entirety. But it seems to me, Your Honor, that the issue really is whether, in Lehman's case, decades of jurisprudence regarding amendments to claims, informal proofs of claims, will simply not apply in the Lehman case no matter how insignificant the harm is to Lehman. This is, in my view, the most hypertechnical objection because Lehman has known since we were put on notice that we had a blocking number, it was timely obtained. So that if they went to Euroclear and said, send us a list of blocking numbers you have for the bonds, they'd know that RBC obtained its blocking number for these bonds. And I don't know whether they've done that or not. But it would be surprising if there was not a double check against sort of

Euroclear and Clearstream's master list of blocking numbers. I don't know how they're doing this but it would be somewhat odd --

THE COURT: Well, let me just ask you something because I don't know how this procedure would ordinarily work. Are you saying that the blocking number requirement is effectively a redundancy because any complying creditor who has obtained a blocking number can have that number reproduced through the clearing systems by simply requesting a download? Are you saying that as a matter of fact or is that just surmise on your part?

MR. FRIEDMAN: I'm not suggesting that we could have done it. I would be somewhat surprised if Lehman, given the nature of what they're doing here, couldn't have done it. I mean, this whole blocking number system was set up for this procedure. Now maybe Euroclear has said to Lehman well, we're not telling you who we assigned particular blocking numbers to and what they're claim is. But clearly, Euroclear's got our blocking number assigned to RBC for at least 300,000 dollars worth of bonds with this ISIN number. The proof of claim that RBC filed, and it's attached to our response, used the wrong claim form. I mean, we represent RBC generally in this case and we filed and helped them file a number of properly completed program securities. RBC is a fairly far flung organization. For some reason that no one can really explain,

this claim came through their Minneapolis office, didn't go to the attorneys in New York or Toronto for RBC and there was a guy in RBC's office in Minneapolis that took his best shot. He had gotten information from the Bank of New York. That information had the blocking number on it. It had the Euroclear account number on it. He wrote the Euroclear account number on the proof of claim. But because he was using the regular Lehman proof of claim and not the program securities claim, there was no blank that said insert your blocking number here that would have tipped him off. He just didn't know.

Now I'm not claiming that we didn't get notice. We actually got direct notice. I'm not even saying this was a publication notice issue. This was a screw-up. And the question is, is this screw-up so bad that it's not subject to being amended. Because we do think in this case that the harm to Lehman is negligible. Again, I don't know how many claims are going to fit in this. But the slippery slope argument probably isn't all that significant for people who actually timely got blocking numbers and didn't include them. I mean, had we included the blocking number but transposed two digits also fatal because it's not the blocking number; it's a different number. I mean, I don't know where you draw the line, Your Honor. But it just seems to me that whether you use an informal proof of claim which is simply intended to put the debtor on notice that a particular claimant seeks to hold the

debtor and the estate liable with respect to a particular obligation has been satisfied in spades here.

On a scale of one to ten of the most aggressive amendments you might make, this is a 1. This is such a minor change. I mean, as the Seventh Circuit said in the Stoecker case, if I may briefly quote it, "If a documentation is missing, the creditor cannot rest on the proof of claim. It does not follow, however, that he is forever barred from establishing the claim. Nothing in the principles or practicalities of bankruptcy or in the language of any rule or statute justifies so disproportionate a sanction for a harmless error. A creditor should therefore be allowed to amend his incomplete proof of claim to comply with the requirements of 3001 provided that other creditors are not harmed by the belated completion of the filing."

In fact, Your Honor, with respect to the data required by 3001, this claim meets that in its entirety. It is only this Court's additional requirement as requested by Lehman that a blocking number be obtained and be put on the proof of claim that's lacking here. And it's only that second part because we did timely obtain the blocking number.

So, Your Honor, we think that this satisfies the claim. We have filed an amended claim. We think that that claim satisfies it. We don't think there's been real harm to Lehman here because there's certainly been no distributions.

They're still in the reconciliation process. They have had our blocking number since we filed our response a couple of months ago. And we just think that, on these facts, the Court should allow the amended claim to stand.

THE COURT: Okay. Thank you.

MS. VICTOR: Good morning, Your Honor. Kim Victor from Thaler & Gertler representing the creditor, the August '86 Trust. I also concur with the arguments that were just made. My client timely filed its proof of claim, signed, fully completed it, put in a broker's number, the brokerage number, the Barclay brokerage number rather than the blocking number. It was clearly just a misunderstanding. All the information was filled out, twenty-four pages were connected to the proof of claim that sufficiently the nature of the claim for the debtor. Once the debtor had advised that the blocking number was not included in the proof of claim, the creditor provided it debtors' counsel. We have also amended the original timely filed proof of claim which corrects any defects as to form to the original timely filed claim.

The point is that there is absolutely no harm to the debtor in this case. The debtor had sufficient knowledge of the claim. They don't put anywhere in their papers that they were unable to identify the nature of the claim, that they weren't given notice, properly timely filed notice of the claim. In this case, it's the creditor who stands to

completely lose a valid claim of 450,000 dollars. At this time, Your Honor, we ask that the amendment that has been attached to our responsive papers be included as a timely filed proof of claim as amended.

THE COURT: Just a question about the affidavit of Joseph Kelly. What am I supposed to do with that? And how does that affidavit which was filed on Monday impact the argument you've just made?

MS. VICTOR: It doesn't really, Your Honor. It doesn't really. It's just proof that there is a blocking number, that the blocking number was provided, that now the debtor is able to track the claim and that any amendment to the original claim is purely just to include that blocking number. There will be no changes to the original claim. So there is no prejudice to the debtor in this case. It was merely just a misunderstanding as far as the number was concerned.

THE COURT: Okay.

MS. HEER: Good morning, Your Honor. Patricia Heer Piskorski of Duane Morris on behalf of Aspecta Assurance International Luxembourg. Your Honor, Aspecta has filed a proof of claim timely and it provided sufficient documentation to sufficiently identify the notes at issue in that proof of claim.

THE COURT: Can I stop you for a second now because if I'm understanding the position of Aspecta which is a little bit

different from the position of RBC and the August '86 Trust. It's that even though you didn't obtain and disclose on your form a blocking number that that shouldn't matter because you've demonstrated that you always held the securities that are the subject to the proof of claim, is that right?

MS. HEER: Your Honor, we have attached documentation to the response to the objection seeking to disallow the claim which does give proof that at the time of the proof of claim those notes at issue in the proof of claim were held and owned and have continued to be held by Aspecta.

THE COURT: Yes. But it's true that Aspecta did not obtain a blocking number and didn't include a blocking number on its proof of claim.

MS. HEER: That's correct, Your Honor. And it did not. And it does understand the requirements of the bar date -- the program securities bar date order and the terms thereof. And the argument is set forth in the motion and there is the documentation provided in there. And we do thank you, Your Honor, for considering it.

THE COURT: Okay. Is there any response from the debtor?

MS. ECKOLS: Just a few points that we wanted to respond to, Your Honor. First, with respect to the no prejudice to the debtor, this is not a matter of ten or twenty or thirty claims that did not comply with the blocking number

requirement. Debtors are still trying to get a handle on the number of claims but right now believe it is definitely north of 500. So that is a significant number; it's not just one or two. And that is going to increase the burden significantly on debtors especially if all the claimants decide to come to court and seek to prove ownership of the securities at issue in some other manner.

With respect to August '86 request that the Court allow them to amend their claims, that issue -- the issue today is simply whether omnibus objection number 29 should be granted. No motions have been filed to date to allow amendments to these claims and we do not believe such relief should be considered today.

With respect to Aspecta -- Aspecta's argument that they've established that they've had ownership of the security, I guess, from the inception of this Chapter 11 case through the bar date, that is simply incorrect. The attachments to their response are simply two pages of documents that appear to have been created by the Bank of Luxembourg. And, at most, what they show is that as of September 2010, which is after the twenty-ninth omnibus objection was filed, that as of that late date, they appeared to own the securities. Therefore, it does not satisfy the goals of the blocking number requirement. And thus, Your Honor, we ask that omnibus objection 29 as to those three claimants be granted.

THE COURT: One more question about the impact of the blocking number. If a blocking number has been obtained and a proof of claim has been filed in reference to a security identified by such blocking number, is it permissible for the claim to be traded or is it, in fact, blocked until such time as a distribution is available from this estate?

MS. ECKOLS: Your Honor, I am actually going to allow Mr. Waisman to answer that question.

MR. WAISMAN: Your Honor may recall that subsequent to the bar date, there were supplemental procedures that were --

THE COURT: I recall.

MR. WAISMAN: And part of those procedures were to permit the claims to freely trade.

THE COURT: Yes. I recall. So here's where I become perplexed. Is the blocking number which is obtained as a condition to submitting a proof of claim based on Lehman program securities purely designed to facilitate tracking and claim management or is it also designed to limit trading at least up to the point that the proof of claim is filed? Or does it have no impact on trading?

MR. WAISMAN: It absolutely had impact on trading. Once somebody obtained a blocking number -- it could have been a day before the program securities bar date or a month prior. The moment they obtained that blocking number, that security could not trade. It was locked. And it was not until a date

well past the Lehman program securities bar date that the number became unblocked and was freely tradable. And the issues become even more complex because the bar date wasn't purely to track the individual security but it was also to reconcile duplications with the larger issuances that were held by the banks. And we have obviously inferences where the bank holding the note filed a proof of claim with the blocking number and then the individual holders who called their brokers who called Euroclear and Clearstream also obtained blocking numbers. You have this multiple layer.

THE COURT: I'm reminded by your comment that when there was a request jointly made by the debtors and certain creditor constituencies for a modification of the restrictions building to the bar date order to permit trading of Lehman program securities, even though there were no objections lodged to that request, that's my recollection that I did not immediately approve that motion but carried it to another omnibus hearing date out of expressed concern that there might be an impact upon the integrity of the bar date order itself. And I was ultimately satisfied that there would be no impact upon the bar date. And now I find myself at a claims hearing where the integrity of the proof of claim process is at issue as it relates to the blocking number component of the proof of claim. And what I'm still puzzling over, and I think I'd like just a little bit more explanation from debtors' counsel on

this, is the actual practical use of the blocking number in tracking claims, reconciling claims and allowing claims particularly in the environment in which these Lehman program securities are now being freely traded.

MR. WAISMAN: Your Honor, may I have a brief moment?

THE COURT: Sure.

(Pause)

MR. WAISMAN: Your Honor, Shai Waisman. Your Honor recalls correctly that the debtors came back with a group of interested creditors previously known as the Coalition of the Willing to seek an addendum to the Lehman program securities procedures. Those procedures -- we -- the debtors and, I believe, the committee always thought were part and parcel of the original program securities notice but they were -- there was enough concern that people wanted a supplemental order. Your Honor expressed concern that perhaps the debtors were succumbing to the hew and cry of the street in doing something that would undermine the integrity of the procedures and adjourn the matter. And we came back with an affidavit of a businessperson setting forth that the purpose of the program securities was to provide the debtors comfort that the party filing the proof of claim had actual ownership of the security at the time the claim was filed and at the time the bar date came. It was required to illustrate the integrity of the claim that the party held the claim that it wasn't traded every

single day up until the bar date and multiple claims being filed. And given that we were past the program securities bar date and therefore anybody that filed a proof of claim with the blocking number, we knew owned the security on that day and that's the only day that matters for the purpose of establishing the claims. Thereafter, there was no reason to require them to continue to hold the claim. No benefit to us. There should be a free market as the bankruptcy rules suggest there should be in the trading of claims. And the order was meant to facilitate the fact that we were so far removed from the bar date there was going to be no benefit to us from restricting trading any further. Parties could continue to trade because what we needed we had at that point. We had proof that a party that filed the claim owned the security on the day in question.

We do not use blocking numbers now to track claims at all. When we go through the 66,000 claims that sit in a pile, we get to a Lehman program securities claim, we verify that there's a blocking number. We do check it against our master list to make sure that it's a real blocking number. And that proves to us that the party that filed the claim owned the security and therefore is the rightful claimant. The next step, of course, is to make sure whether somebody else filed a proof of claim on behalf of that issuance.

THE COURT: I hear you although I must say that this

adds strength to the argument made by Mr. Friedman that on a scale of one to ten, this is a one. This isn't a ten in terms of technical noncompliance because the blocking number is, in effect, an extra protection designed to make sure that the party who filed the claim with respect to these freely tradable instruments in fact was the owner of the claim at a particular point in time that is relevant for bankruptcy purposes but for no other purpose because the instruments may have traded multiple times already, in some instances, and may continue to trade in the future.

Now I have no problem with the free trading of securities. The only problem I'm having right now is whether the significance of the failure to include a blocking number on a proof of claim is so material a failure to comply with the expressed requirements of the proof of claim bar date procedures as to warrant claim disallowance when a party objects. And I'm having some trouble with this right now, particularly, I must tell you in the case -- it kind of goes up in significance, A, B and C. RBC has the strongest position; August '86 Trust has the next strongest position; and Aspecta Assurance has the weakest position, as I see it. But I think Aspecta is simply making an argument well, we didn't do it but we own the security. Here. See this attachment to our response. They clearly didn't comply with the no blocking number problem. But they, in effect, make an argument for the

great unwashed that didn't comply at all. That's your floodgates problem, the problem that parties who never obtained a blocking number will come forward and say we have the ability through extrinsic evidence to demonstrate that we, in fact, own the security at the time that we filed the proof of claim. I have a problem with that.

But as to anybody else who actually had a blocking number and somehow messed up, I'm having a hard time seeing why this is such a problem for the debtor. And I need to understand a little bit more about why procedurally this creates such a potential hornet's nest of claim administration difficulty down the road.

MR. WAISMAN: Your Honor, I'd say a couple things. First of all, there is nothing Your Honor has just said that we disagree with. We have spent a lot of time struggling with these very issues. The obvious statement that the bar date in this case was so unique that it does not fit squarely within the precedent, and I understand Mr. Friedman citing to the legend of case law on amendments, but this case just doesn't fit squarely within those parameters and it is difficult to reconcile.

The program securities requirement was very explicit and specific and absolutely necessary. Without it, this case would be a quagmire and we would have no ability to reconcile over 30,000 claims.

In many ways the program's security's blocking number is itself the claim. Without it, you're submitting a statement that at some point you own something. But if you don't submit the program security's number it doesn't -- it doesn't comply for the purposes of a bar date in this case. We have, in other circumstances, been to Your Honor with claims issues, claims objections and have agreed with Your Honor that we need to strictly enforce the very specific and very unique requirements of this bar date order because it is such a slippery slope. And the fear here is that we know of here eleven, we already know of 500 more, it's a reconciliation. We haven't been through the lion's share of our claims. The number is certainly to grow of claimants who got the blocking number but simply didn't include, forgot for whatever reason. And as I said before, we are here because that's a slippery slope to -- well, they forgot -- I forgot to get it but I can prove to you that I had it, and then we're going to be inundated with thousands upon thousands of claimants coming to this court to prove that they held the security and that they can meet the purpose of the program securities blocking number requirement by extrinsic evidence, even though they didn't supply the number.

And when you try to differentiate those two, you come back to there was a requirement, it was to be strictly enforced and people didn't comply. And as Ms. Eckols said, a number of

times, there were two requirements; to get the number and to include it. If we start to excuse one people are certainly going to argue you have to excuse the other, and we have a hard time differentiating between those two.

THE COURT: I'm not sure I have such a hard time differentiating between those two.

MR. WAISMAN: Well, you wear the black robe.

THE COURT: That's true. But obviously claimants that do everything perfectly are to be applauded for navigating what is a fairly complex claims process in this case. This is not, by any means, standard issue. But as I understand the purpose to be served by the obtaining and inclusion of a blocking number, it is to establish, in a user-friendly way from the perspective of the debtors, that a particular claimant within the pool of holders of Lehman program securities, in fact was a holder on the relevant date, correct?

MR. WAISMAN: That's correct.

THE COURT: I think that in the case of RBC capital that there really has been the kind of compliance that fits within the applicable case law that I cited in my omnibus late filed claims decision, in which good faith attempts to comply coupled with confusion can lead to an excuse. And here there was good faith compliance in the sense of obtaining a blocking number and somebody in Minneapolis goofed, they win. Now, they win on particularized facts and I don't think that opens a

door.

My next question to myself is well does August '86 Trust win? And maybe I need to think some more about that after taking a look at the affidavit of Joseph Kelly, which obviously Mr. Kelly, who's a solicitor, thought worthy of my attention. I haven't paid enough attention to it yet and I want to think about it some more.

But let's just say, for the sake of discussion, that August '86 Trust wins too, what's the principle that has just been established? It seems to me that the principle is that anybody who has gone to the trouble of getting a blocking number but who has failed, through negligence or administrative error, to include the blocking number but who later provides that blocking number is, in effect, curing the defect in a manner that doesn't take away from the integrity of the bar date order. Nor does it in a material way because I don't imagine there's going to be a huge class, but I could be wrong, of parties who actually obtain the blocking number and then negligently failed to include it.

It seems to me that the debtor is still in a position to use the blocking number because the blocking number has been provided and the integrity of the proof of claim, as it relates to Lehman program securities is preserved.

The Aspecta case is different. That's the we didn't do it at all problem but we have other means of establishing,

in a way that we think should be credible, that we held Lehman program securities at the time that a proof of claim was filed and completely ignored the requirement of including a blocking number. They lose.

And I believe that you can draw a line here that says if you have a blocking number you have done everything that you can reasonably do to meet the spirit of the bar date notice as it relates to Lehman program securities, assuming that you have, for good cause, failed to include. That you have reason to establish that there was legitimate confusion or a legitimate failure to comply, not just I willfully held it back because I thought it was a stupid requirement, that's not going to work. But if there was what amounts to good faith efforts to comply with that requirement and you then later provide the number, it seems to me that the blocking number component of this requirement is satisfied.

MR. WAISMAN: Your Honor, if I may interject for one moment. As Your Honor is describing this narrow exception, it might be helpful if it relates to entities that timely filed proofs of claim, have obtained a blocking number but for good cause failed to include and later provide it.

THE COURT: That's exactly what I'm saying. That can't be a very big class of claimants and if it turns out to be, well, so be it.

That's my best effort at walking a tightrope created

by these requested exceptions to the blocking number requirement of the bar date notice. I'm not making a ruling yet with respect to the August '86 Trust because I want to take some time to look at the affidavit of Joseph Kelly. But if the August '86 Trust fits within the exception, I've just articulated, then they'll prevail. I'm sorry Aspecta loses. They just didn't get a blocking number and they're out of court.

MR. WAISMAN: Thank you, Your Honor. That guidance is very, very helpful as we try to navigate these waters and turn to Your Honor for guidance on the narrow calls.

THE COURT: Okay.

MR. WAISMAN: Greatly appreciated.

MS. ECKOLS: Thank you, Your Honor.

MR. FRIEDMAN: Your Honor, I just want to figure out the best mechanics to get an order reflecting your decision with respect to RBC.

MR. WAISMAN: I think what we would do is remove it from the proposed -- remove your claim from the proposed order that we hand up today and there's no objection pending to your claim.

MR. FRIEDMAN: Okay. We do have an amended claim; we can deal with that by stipulation.

MR. WAISMAN: Why don't we speak and take care of it?

MR. FRIEDMAN: Thank you very much, Your Honor.

THE COURT: Okay.

MR. WAISMAN: I'm sorry, Your Honor, just one moment. Thank you.

THE COURT: You can feel free to confer.

(Pause)

MS. ECKOLS: Your Honor, taking up agenda item number 12, which is debtor's thirty-ninth omnibus objection to claims, this is seeking to disallow and expunge claims that are duplicative, either exactly or in substance of another claim filed for the same party.

There is only one formal response. It was filed on behalf of eight claimants. Hesitate to call it an objection because it states that if our omnibus objection is only seeking to disallow duplicative claims, then it has no objection to us doing so and the debtors are only seeking to disallow and expunge claims that are duplicative by this omni.

THE COURT: Everybody in that category appears to be a citizen and resident of Greece.

MS. ECKOLS: That is correct.

THE COURT: And I read that objection or response or reservation of rights, however we're going to characterize it and it wasn't entirely clear to me whether or not in fact they will have surviving claims.

If the answer is that they will have surviving claims, then I have no hesitation in granting the thirty-ninth omnibus

objection and treating their response as in effect a statement of no objection provided that they have surviving claims.

MS ECKOLS: Your Honor, those claimants do have surviving claims and they're set forth on the exhibit to that omnibus objection.

THE COURT: In that event, the thirty-ninth omnibus objection is granted.

MS. ECKOLS: Thank you, Your Honor. And at this point I am going to cede the podium to Mr. Waisman for the next agenda item. Thank you.

MR. WAISMAN: Your Honor, Shai Waisman again for the Lehman debtors. The final contested matter and final matter on the agenda today is the debtor's objection to the proofs of claim filed by William Kuntz, III, filed at docket number 11351.

THE COURT: Mr. Kuntz is here.

MR. WAISMAN: Your Honor, as the Court has learned over time, Mr. Kuntz filed eleven proofs of claim in these Chapter 11 cases. Pursuant to three previous orders of the Court, six of those eleven claims were determined to be amended and superseded by other claims and were disallowed and expunged. Pursuant to this objection, the debtors seek to disallow and expunge the remaining five claims filed by William Kuntz.

Pursuant to the objection and as I indicated there

were five claims that we sought to disallow and expunge, we requested that two of the claims, 35121 and 35430 be expunged on the basis that they were superseded by three of the remaining claims.

Mr. Kuntz, in his several replies, did not respond or object to such relief and we request that Your Honor disallow and expunge claims 35121 and 35430 on the basis that there was no objection.

In any event, as Mr. Kuntz has stated on the record previously in these proceedings, he has three surviving claims that we reference in our objection and reply as the surviving claims. Mr. Kuntz asserts that each surviving claim is an unsecured but priority claim against Lehman Brothers Commercial Paper, Inc. Based on Mr. Kuntz' alleged claims against Grand Union Capital Corporation, an entity not in these Chapter 11 cases, not a debtor in these Chapter 11 cases and not affiliated with any of the debtors.

Specifically, Mr. Kuntz asserts that he was the holder of certain zero coupon notes issued by Grand Union Capital and that he opted out of a settlement, with respect to such notes, in Grand Union's first Chapter 11 case in 1995. By opting out of the settlement Mr. Kuntz claims that his notes remained outstanding and that the indentures governing such notes were not cancelled.

Mr. Kuntz further alleges that in Grand Union

Company's third Chapter 11 case in 2000, and Your Honor will note I reference Grand Union Company, which was the entity that filed the third case in 2000, a distinct entity from Grand Union Capital Corporation, which is the entity that issued the zero notes to Mr. Kuntz.

Mr. Kuntz, in the third Chapter 11 case which related to Grand Union Company, a certain cash escrow fund that was created in the 1995 case, funded by Grand Union Company, was applied to a purported balance owing to Lehman Commercial Paper, Inc. Mr. Kuntz alleges to have an interest in such escrow, based on his ownership of the zero notes.

In support of his claims Mr. Kuntz has admitted, among other things, his own summaries of his alleged claims against Grand Union Capital Corporation, his indecipherable hand-written notes, certain Grand Union circulars and newspaper articles. None of the documents submitted by Mr. Kuntz reference Mr. Kuntz or any of the debtors in this case in a manner that would give rise to a claim.

The surviving claims provide no evidentiary support as to the legal or factual basis of the claims. Mr. Kuntz fails to provide actual -- any actual information regarding the Grand Union bankruptcies, either the bankruptcy of Grand Union Capital Corp or Grand Union Company or the relationship between those entities. He fails to provide any documents or evidence that establish he was a holder of notes issued by Grand Union

Capital Corp, that he had a claim against Grand Union Capital Corp based on such notes, that the escrow fund created in the first Chapter 11 case by Grand Union Company even existed, that he had any interest in such escrow, that LCPI or any other debtor received funds from that escrow, that any claim he had against such escrow, against Grand Union Capital Corp, against Grand Union Company leads to liability on behalf of Lehman Commercial Paper Inc. or any debtor in this Chapter 11 case.

As stated in our objection, because Mr. Kuntz has appeared in these Chapter 11 cases as a pro se litigant, we used extra effort to decipher the substance of the surviving claims from the information provided by Mr. Kuntz in all of his claims and the public records relating to the three Grand Union Chapter 11 cases.

To the best of the debtor's understanding, the surviving claims are based on the following facts, as set forth in detail in the objection.

In January of 1995 two related Grand Union companies filed for Chapter 11, Grand Union Company and Grand Union Capital Corporation. Grand Union Company was the operating entity; Grand Union Capital was the holding company that issued the debt.

Grand Union Capital issued the zero coupon notes well prior to the 1995 Chapter 11 case. Mr. Kuntz alleges that he is a holder of the notes. Mr. Kuntz failed to attach to his

proofs of claim or otherwise provide to the debtors or this Court with a copy of any of such notes that he allegedly holds.

That being said, upon our review of the Grand Union Chapter 11 cases we do not dispute that Mr. Kuntz was the owner of zero notes in the amount of 892,000 dollars. Mr. Kuntz alleges but has yet to provide any evidence that he held two other issuances of the notes totally in excess of, I believe, three million dollars.

In the first Grand Union Chapter 11 case Grand Union Company and the Official Committee of Unsecured Creditors entered into a settlement with respect to these zero notes. Pursuant to the settlement, upon the effective date of the Chapter 11 plan in that case, the zero notes issued by Capital Corp would be extinguished and the holders of those notes would receive warrants for the purchase of stock in Grand Union Company.

Mr. Kuntz filed an objection to the settlement and his objection in that first Chapter 11 case was overruled. At the plan confirmation hearing Grand Union Company represented that any holder of the zero notes who did not consent to the settlement would be able to keep -- maintain their notes. Mr. Kuntz opted out of the settlement and was to maintain his notes.

Again, the notes were issued by Grand Union Capital Corporation, pursuant to the first Chapter 11 case and the

confirmed plan in that case, Grand Union Capital Corporation, was to be dissolved upon the effective date of that plan. The plan was confirmed. Grand Union Capital Corp was dissolved.

Grand Union Company filed its second Chapter 11 case in 1998. During the course of that case Mr. Kuntz complained to the bankruptcy court that his notes from the first case were converted to warrants and that was improper based upon the statements made at the confirmation hearing because Mr. Kuntz did not consent to the settlement.

As a result, in the second Chapter 11 case, Mr. Kuntz and the debtors, at the Court's direction, entered into a stipulation that provided Mr. Kuntz his zero notes in Grand Union Capital Corporation, the entity that no longer existed. Mr. Kuntz then asserts that in the third Chapter 11 case of Grand Union Company a cash escrow fund created in the first bankruptcy case was, in this third bankruptcy case, paid to LCPI.

Mr. Kuntz provides no evidence of the existence of an escrow in which he or the holders of the zero notes had an interest. He provides no reference for the record Grand Union cases, no plan, no agreement, no order of the Court that established any such escrow. Even if Mr. Kuntz could establish the existence of an escrow, he fails to provide any evidence that the funds from such an escrow were taken by any debtor in this Chapter 11 case.

As stated in the objection, a cash escrow fund was created in the first Grand Union Chapter 11 case. It was created and funded by Grand Union Company in the amount of three million dollars. The purpose of the escrow was pursuant to a settlement between Grand Union and its financial advisor, Miller Tabak & Hirsch, MTH. And pursuant to that relationship MTH provided financial advisory services to Grand Union Company.

In connection with the first Chapter 11 case, MTH and Grand Union entered into a settlement of certain disputes between them pursuant to which Grand Union Company agreed to indemnify MTH and fund the escrow. Grand Union Company deposited the three million into the cash escrow account, which funds were to be used only to indemnify and reimburse MTH with respect to certain claims, if any, brought against MTH with respect to its role in Grand Union.

The settlement agreement between MTH and Grand Union is not related to the zero settlement and in fact makes no reference to the zero settlement or the zero notes. Neither the zero noteholders nor Mr. Kuntz had any interest in this escrow. In fact, as I indicated, the escrow was established by Grand Union Company, an entity separate and distinct from Grand Union Capital Corporation which issued Mr. Kuntz his zero notes.

The funds that were deposited in this escrow in the

first case were ultimately not needed to reimburse MTH and were distributed back into the general operating account of Grand Union Company in 2000, during the third bankruptcy case. No escrow agreement was ever created or ever existed in relation to the zero notes.

Mr. Kuntz' responses to our objection contain information and allegations that are unsupported by fact or law. Mr. Kuntz alleges that a transcript from one Grand Union case reflects that a cash escrow was applied to Lehman debt. Mr. Kuntz did not provide a transcript, a quote from such transcript, any motion filed seeking to disburse such funds, an order of the Court authorizing the disbursement of such funds, no evidence whatsoever.

Mr. Kuntz also alleges that a deposition purportedly taken from him by counsel to Grand Union somehow evidences his interest in Grand Union Capital Corporation and in these escrow funds. Mr. Kuntz fails to provide such -- a transcript of such deposition or any additional details.

Pursuant to his surviving claims, Mr. Kuntz alleges claims against LCPI in the aggregate amount of over eleven million dollars, not an insignificant claim. One would assume that Mr. Kuntz would have sought to recover his eleven million dollars, in his notes, well before September 2009 given that this escrow was created in 1995.

Mr. Kuntz provided no evidence of any letters, other

communications with Grand Union, seeking to recover the eleven million dollars from any of the Grand Union entities. He didn't file any action in state or federal court in the fifteen years seeking payment of his eleven million dollars. In fact, Mr. Kuntz, as I indicated, objected to the zero coupon settlement and got to keep his notes against Grand Union Capital Corporation.

He objected to the plan confirming the first Chapter 11 case, which established the escrow in favor of MTH in the amount of three million dollars. He objected to that plan, his objection was overruled, the plan was confirmed.

In the second Chapter 11 case he obtained a stipulation, again reinstating his notes against Grand Union Capital Corporation, now a dissolved entity. And finally, as indicated in our reply and supplied as an exhibit to the reply, in the third Chapter 11 case Mr. Kuntz appeared and filed a lift stay motion seeking to access the escrow funds on account of his interest in the zero notes. He fully litigated that lift stay motion and the relief was denied.

Each of these, separately and taken together, are res judicata for all the claims he seeks to assert here, before we even get to whether or not these funds were disbursed somehow to LCPI, for which there is no evidence.

In sum, Your Honor, Mr. Kuntz hasn't provided one shred of evidence to support these fictitious theories

amounting to his signed and filed claims in the amount of eleven million dollars. Not a single pleading, agreement, letter, decision of the court, transcript or other evidence. Nothing.

We, the debtors, have scoured the information he provided and the Grand Union Chapter 11 cases, all three of them, and we have found no evidence that he has any interest in an escrow or that funds were inappropriately disbursed to LCPI.

Mr. Kuntz can't provide such evidence because no such evidence exists. His attempt to collect his fictitious claim from the debtor's estate, to the detriment of all of the legitimate creditors in these Chapter 11 cases, cannot continue. He has not and cannot meet his burden to establish a valid claim against these debtors and we request that the Court overrule Mr. Kuntz' responses and that the debtor's objections be granted and Mr. Kuntz' remaining claims be expunged.

THE COURT: All right. Thank you. Mr. Kuntz?

MR. KUNTZ: Thank you, Mr. Waisman. I think you should take up a career in writing fiction.

THE COURT: What did you say?

MR. KUNTZ: I think he should take up a career writing fiction, Your Honor.

THE COURT: That's -- that's -- that's really an inappropriate comment.

MR. KUNTZ: That's not inappropriate. I have the

decision of Judge -- District Court Judge Martini.

THE COURT: What does that have to do with what he just said?

MR. KUNTZ: Weil Gotshal is co-counsel to Grand Union in New Jersey. Now they profess to know nothing, we don't know anything. They were paid millions of dollars in fees. Mr. Tannenbaum was copied on their own exhibit. He's a partner in their firm. In their own exhibit it discusses the cash escrow account. Okay. I just want to clear this first.

THE COURT: Mr. Kuntz, I've read your papers, I read your affidavit. This is your opportunity to respond --

MR. KUNTZ: All right, Your Honor. I will give --

THE COURT: -- will you listen to me, first?

MR. KUNTZ: Yes, Your Honor.

THE COURT: This is your opportunity to respond to the objection that has been and in particular to the allegation that you have no proof that LCPI or any other Lehman entity took, inappropriately, any funds in which you might have a legitimate interest.

So the essential question before the Court has nothing to do with Weil Gotshal, it has everything to do with you. How do you prove a claim?

MR. KUNTZ: I understand, Your Honor. May I digress for a moment? Before Your Honor --

THE COURT: If you can just answer the question.

MR. KUNTZ: May I digress for a moment? Before Your Honor has to relive and go through all this Grand Union situation and without the help of counsel for the debtor, I've discovered that there remains unclaimed funds in the Grand Union episode in New Jersey, with the Department of Unclaimed Funds.

Now it's my understanding, since they only provided the plan from the first Grand Union things, that those are potentially Lehman Brothers funds. And in the interest of judicial economy, since Judge Winfield has already lived these two cases in New Jersey, that the question of my interest in the escrow fund be considered by her. And if Your Honor says no, I'm happy to proceed. If Your Honor would like to consider it, I think it would save Your Honor a lot of aggravation and a lot of time if Judge Winfield, who considered both cases and came up with the order replacing the missing stock certificate, has an opportunity now, eleven years later, to decide on a cash escrow account that should have been decided fairly and fully eleven years ago.

That is, I've heard often in this courtroom, oh but out of an abundance of caution we're coming here, this, that and the other. They had an opportunity eleven years ago to put the question of the escrow before Judge Winfield and say is it okay that we have the money, can it go into Grand Union, is it not okay? Should you go back down to Judge Walsh in Delaware,

since it's his original case? They chose to assume the risk of not putting it before Judge Winfield. They chose to assume the risk of not putting it before Judge Walsh, okay.

And my situation is rather unique and it hasn't been addressed by counsel yet. I'm the holder of zero coupon notes. I understand that as a holder of the notes my rights to challenge the actual escrow, although I might have gone and said something, the rights to challenge the escrow belong to my indentured trustees, they don't belong to me. My rights over in New Jersey were the rights to the ownership of the security that went missing in the back office of which is now Wells Fargo advisors. The rights to go after the escrow belongs to the -- that is the power and the rights, belongs to the indentured trustee of a zero until the date the zeros mature. These zeros did not mature until 2004 and 2007.

So my understanding is, I might have been very unhappy with the situation, and I said so before Judge Winfield and I said it in two different cases, but the actual power to go after the escrow didn't belong to me, it belonged to the trustees, U.S. Bank and now HSBC. And I remember Your Honor's decision with the Hong Kong mini bonds eighteen months ago. I was very concerned that Mr. Waisman was going to pick up on that because you know what, and I'm being candid, had he used that I would have been out of this case a year and a half ago, because it's my trustees that had, before the maturity of the

notes, the power and the right to go after the escrow.

Now statistically, 99.7 percent of the bondholders tendered. So my understanding is there was a 700 million dollar issue sold to bail out Solomon Brothers and statistically that violates the Martin Act in this state. They sold 700 million dollars worth of securities and nobody got paid.

Now the coverage on the notes, 99.7 percent tendered, that is 700 million versus the three million escrow, went down to where my notes were covered. MHT was not the financial advisor. MHT, as reflected in many places, was the controlling entity of Grand Union as well as Penn Traffic stores in Syracuse. It's listed all throughout the papers and Mr. Waisman says, oh there's nothing in our papers. In their own exhibit it references, in Exhibit 4 I believe, Grand Union, Miller Hirsch Tabak, zero coupon notes, sign the release, we're home free escrow.

So what you have here Your Honor is really knotty little problem of bondholders, trustee, a cash escrow account, what happened in their own exhibit it says that the cash escrow account went into Grand Union's operating account. Lehman was the creditor, the fund were co-mingled.

And I've shown in the exhibits, CNS that bought Grand Union is stonewalling me. The state comptroller's office moves at a speed of snail that would make a race horse at Saratoga

seem fast. So I'm here, no discovery, this firm was co-counsel to Grand Union in New Jersey and they're saying we don't have any records, we don't know. And as I put in my affidavit, all my records were destroyed. I'm really sorry about that, or else I would have provided copies of the deposition. But I had an unfortunate episode in upstate New York, a house was sold where all my stuff went and it's all gone. And I have the original correspondence if Your Honor would choose to look at it at some future point.

THE COURT: I don't mean to break in.

MR. KUNTZ: Go right ahead, Your Honor.

THE COURT: I think you have just said that you lack the ability to present any documents in support of the arguments made in your proof of claim and in your various submissions, that there is Lehman related liability for what happened in the Grand Union bankruptcy case, is that correct?

MR. KUNTZ: No, I didn't say that. I said in my papers I said all the Grand Union records that are available and have been available to this firm who is co-counsel, are in the federal records repository.

Now as I understand, under the local rules --

THE COURT: Just answer my question, which was the first question that I posed to you and you said you were going to, with permission, say some other things that were not responsive and I'm not sure if you're yet to the point of

responding to my question, which is why I interrupted.

You said that you lost, as a result of the loss of a house upstate --

MR. KUNTZ: Yes, Your Honor.

THE COURT: -- access to a number of personal records.

MR. KUNTZ: Yes, Your Honor.

THE COURT: As a result of which you no longer have copies of certain documents that used to be in your possession, is that correct?

MR. KUNTZ: That's correct, Your Honor.

THE COURT: Okay. So my question to you is, do you have available to you any proof that would connect your claims in the Grand Union case to Lehman Brothers?

MR. KUNTZ: I believe it's in their own exhibit. It's in the letter from the attorney sent to Judge Winfield. It discusses the escrow account; it discusses depositing the escrow account in there. It copies Mr. Waisman's firm. Attached to my first reply is the security -- the outline of the security interest of Lehman Commercial Paper and Grand Union.

THE COURT: Well, this isn't a --

MR. KUNTZ: It's all there before Your Honor.

THE COURT: This isn't a mystery novel. It's not something I or anybody --

MR. KUNTZ: It's already there, Your Honor. I've

already provided it.

THE COURT: Wait, Mr. Kuntz. We have to have a respectful dialogue, which means that I listen to you and you listen to me.

MR. KUNTZ: Thank you, Your Honor.

THE COURT: Where is there proof that connects your claims, whatever they may be, relating to Grand Union to any debtor?

MR. KUNTZ: Can I refer to the May 11, 2011 (sic) letter of Raven Greenberg, co-counsel to Weil Gotshal, which is contained in their objection to my claims? It's a five-page letter. I'm not going to, necessarily, read off it. It says quite clearly in there that they discussed the cash escrow, they discuss it being deposited.

THE COURT: Well, even if there is a cash escrow and even if you have claims against the cash escrow, what is your claim that Lehman improperly took a cash escrow to your detriment?

MR. KUNTZ: I didn't say improperly yet. I haven't been allowed any discovery, Your Honor. I'm simply -- you know, for two years I was basically scoffed at. Your Honor was questioning whether there was even an escrow. Well, lo and behold, today there was a three million dollar escrow.

You know, co-counsel to Grand Union paid fifteen, twenty million dollars in legal fees, full access to all of

Grand Union records, well we can't find your deposition. They've had a year and a half, two years, to ask and how many hundreds of millions of dollars have been paid to professionals here? Do you think they could send something off to the federal records repository, a seventy-five dollar check, send us a copy of your Grand Union papers. They haven't done it.

Your Honor has said the burden shifts back and forth. Valid claim, objection, back to me, the ball's in my court. In their own document it discusses the cash escrow.

THE COURT: Mr. Kuntz, I'm asking you a very focused question.

MR. KUNTZ: I don't know the answer to that question, Your Honor.

THE COURT: How --

MR. KUNTZ: Because there's no follow through.

THE COURT: How do you intend, today or any other day, to meet your burden of proof to establish a causal link between your claims, whatever they may be in the Grand Union bankruptcy and any cognizable claim in the Lehman bankruptcies?

MR. KUNTZ: It's very simple, Your Honor. Under the escrow agreement, if it can be established. Statistically, I believe, it's already established, but if it can be established to Your Honor's legal satisfaction that the Miller Hirsch firm violated the Martin Act in this state, that would allow me an interest in the escrow fund because the escrow fund was

created, not them as financial advisors, they were the controllers.

It says clearly that they assisted Solomon Brothers in purchasing Grand Union and they did the underwriting when Grand Union went private, so to speak, and Solomon Brothers, and the underwriting was done by Goldman Sachs, 700 million dollars in bonds sold to three or four large mutual funds, Solomon Brothers, at the time controlled by Mr. Goodfriend and then Mr. Buffett got the proceeds. Five years later, they take the 99.7 wipe out, 700 million dollars gone.

I think anybody who understand anything about the Martin Act, that's a prima facie case that there's a violation. It may not be a legal case but it's a prime facie case that there's a violation of the Martin Act and a violation of the Martin Act allows me to reach toward the escrow fund.

That doesn't mean -- and I don't really know what happened to the escrow fund. It went in and CNS came along and they gave Lehman I don't know how many hundreds of millions of dollars so there was a co-mingling. And I'm simply -- it's my belief that I have an interest, now, in that fund and I've done it by filing proof of claims. And quite frankly, I shouldn't even be standing here.

U.S. Bank and HSBC, who were the respective trustees, should be doing this work for me, but they don't care because they already got their money and as far as they've concerned

they've purged their records in their computers. Nobody knows nothing, nobody cares nothing because I'm just some stupid retail investor who's trying to get to the table in basically a case where the institutional investors are invited and I'm just some sort of interloper who's been after this money for fifteen years.

And I'm trying to do it -- and my understanding of the constraints on me as a holder of these securities, where there's trustees, where I did not take the situation in Delaware, where one of the three securities was gobbled up by the back office of the Depository Trust Company, it took two years to get Judge Winfield to order that back.

So I'm here today, after two years of oh there isn't even an escrow account, well there was an escrow account and it's colorable now before Your Honor, or unless Your Honor, as I suggested, wants to send it to Judge Winfield, it remains to be further inquired into. I've had no discovery. Nobody showed me anything. CNS is, like, we're not going to give you anything; if you do anything further we're going to sue you. The state comptroller's office does nothing.

THE COURT: Mr. Kuntz --

MR. KUNTZ: Mr. Waisman's firm has full access to the deposition.

THE COURT: Mr. Kuntz?

MR. KUNTZ: Yes, Your Honor.

THE COURT: Do I understand from what you've said that your claim in the present bankruptcy case before me is based upon your belief, to use the word that I heard you articulate, that the escrow has ended up in Lehman's accounts co-mingled with other funds? Is that the basis of your claim?

MR. KUNTZ: That's close to it.

THE COURT: What's the basis of your claim?

MR. KUNTZ: The claim would be one step further removed, that it went in co-mingled at Grand Union, subject to Lehman's security interest, then, I believe, a 363 buyer came along and purchased Grand Union and Lehman got paid.

So at a certain point the escrow, sort of, goes off the radar. There was no hearing before Judge Winfield; there was no hearing before Judge Walsh. And it's now somewhere in the overall Lehman balance sheet of problems and that's what I believe.

THE COURT: Okay. I understand that's what you --

MR. KUNTZ: I'm sorry I just don't have a cut and dried situation.

THE COURT: I understand that's what you believe. How does what you believe translate into a claim against the Lehman estate that is entitled to allowance?

MR. KUNTZ: It's the violation of the Martin Act, creates a superior claim to the escrow fund that Lehman, as a creditor of Grand Union, then my claim prevails and therefore

my claim in this case prevails.

THE COURT: I didn't understand what you just said.

MR. KUNTZ: The Martin Act is a law in New York State that prevents the sale, fraudulent sale of securities. Seven hundred million dollars sold in securities, payment -- very, very micro amount of payment. Most people would think if you gave somebody a hundred dollars and you got a nickel back or a penny you were swindled, to use Victor Kurtz' term.

The escrow fund was created as, sort of, cold comfort to Miller Hirsch & Tabak, who were controlling Grand Union having bought it from Solomon Brothers and underwritten it through Goldman Sachs, as cold comfort for perhaps six, seven, eight years when the writing, in essence, the time and the writing came on the wall that Grand Union was going to be gone and only their trade dress remains in the retail market, they decided to pocket the escrow account.

There was no hearing before Judge Winfield. There was no hearing before Judge Walsh. It was a very simple deal. The matter was already before Judge Winfield. All they had to do was say, Your Honor; we would like Your Honor's approval for us to deposit this escrow into Grand Union's operating account. Judge Winfield would have said, Mr. Kuntz what do you say? That didn't happen. Judge Winfield was already troubled by the fact that almost a million dollar security had gone missing. And she -- you know, there was paperwork in there and finally I

accepted the return of my security, which is what I wanted all along.

It would have been very simple, since she was already up to speed on the situation, for them to say we'd like the Court's approval of the escrow and Judge Winfield could have said, well, this should have been Judge Walsh. He created -- he approved this in '95. Go down to Delaware, take Amtrak down to Delaware and talk to him. Or she could have said it's not really in my case, go right ahead. Mr. Kuntz, if you don't like it go across the street or go upstairs, talk to the district judge in New Jersey. That didn't happen. That did not happen. And I have heard over and over again, ad nauseam, in an abundance of caution. That didn't happen.

You have -- they took a calculated risk. They never thought Lehman Brothers, in their wildest dreams, eleven years ago would end up here in this court. The strong of hands of Lehman Brothers, maybe they played a little shell game, it went here, it went there, the fundamental proceeds ended up in Lehman's hands and that's why I'm here today. And I've already demonstrated I saw trouble come with Lehman, I sold my stock. The excess money that I had in Lehman was deposited there. I had already started action in New York State Supreme Court before Lehman filed bankruptcy, that was in my automatic stay litigation.

I asked to come here to continue with that, Your Honor

denied it. Weil Gotshal says we don't know anything about Grand Union, what's this? It turns out they were co-counsel. District Court judge decision, letter opinion, co-counsel to Grand Union. It's outrageous that they sit here and act like they don't know anything about Grand Union, they know everything about it.

And you know -- and quite frankly the money has nothing to do with it. The money is just how everybody in this room, the few that are here today, keep score, trading claims, this, that and the other. The reason for the objection is to still the voice of dissent, just like out in Oklahoma. But in Oklahoma the CFS case, Judge Rasure's case out in Tulsa. You may recall, Your Honor, it started off when I asked to have the stay lifted and a large document was filed listing all these various cases that I've been involved in.

THE COURT: I'm familiar with that.

MR. KUNTZ: In that case in Oklahoma my credit card account was an asset of the estate. I was a judgment debtor of Key Bank. In this case I'm pursuing an escrow account that I believe is colorable sufficiently enough for my claim to withstand this challenge and go over into an evidentiary hearing, which is provided by the local rules.

Now, if the four gentlemen are gentlemen they'll come to court without a subpoena. I'm not so foolish as to think I'm going to issue subpoenas so the retired chairman of Solomon

Brothers, a partner of the firm, a former partner of the firm. If they'll come along to court, so be it. If they won't come along to court, Your Honor can draw your own conclusions. If they're gentlemen they will come, no matter what their personal risk.

Solomon Brothers was almost a mirror image of Lehman, except that it didn't collapse. Thank you, Your Honor.

THE COURT: Mr. Kuntz, I --

MR. KUNTZ: Go ahead and rule.

THE COURT: I actually am not ready to rule, I need to hear more from you.

MR. KUNTZ: Thank you, Your Honor.

THE COURT: I need to hear some more focused comments, though. You have a burden proof and you recognize that. You have a belief which you have used as the basis for filing a number of proofs of claim against Lehman Brothers.

I am still struggling in my attempts to understand how your sincere belief that money that you have a claim to from a Grand Union bankruptcy case in New Jersey --

MR. KUNTZ: Delaware, Your Honor.

THE COURT: Well, I thought that we had a Judge Winfield case in the third Grand Union case in which you appeared, correct?

MR. KUNTZ: Second and third.

THE COURT: There were two in Delaware and one in New

Jersey?

MR. KUNTZ: Two in New Jersey. The first one was in Delaware.

THE COURT: That was Judge Walsh's case?

MR. KUNTZ: Right. There was Judge Walsh. There was Grand Union Company, Grand Union Capital and Grand Union Holding.

THE COURT: The record will reflect, in those cases, where they were filed but let me get it right. First one was in Delaware before Judge Walsh.

MR. KUNTZ: That's correct, Your Honor.

THE COURT: Then the second and third cases were in front of Judge Winfield in New Jersey, correct?

MR. KUNTZ: Yes, Your Honor.

THE COURT: You were a creditor in all three cases?

MR. KUNTZ: No. I was a creditor in the New Jersey cases only to the extent that the 892,000 face, which is the smallest of the three that I owned, I had -- there was an exchange period. I waited a year and so many months, I held the security out. I put the security back into my account on Park Avenue and the depository trust company, the next morning, converted it into warrants. That is -- I didn't sign the transfer agreement or anything. We had two years go around. Judge Winfield says give it back and at which point my claim was expunged from the New Jersey case and that was it.

THE COURT: All right. I'm just trying to get some basic facts understood and mostly it has to do with your ability to prove a claim here.

As I understand your belief, it is that Lehman Brothers --

MR. KUNTZ: Commercial Paper.

THE COURT: -- LCPI, has liability to you in connection with certain activities that took place in a New Jersey bankruptcy, is that correct?

MR. KUNTZ: Yes, Your Honor.

THE COURT: And is it in the second or the third cases or both cases that this liability creating activity took place?

MR. KUNTZ: I believe, if I'm looking at the exhibits to my first one, I'm looking at June 24th, 1998 revolving credit agreement between Grand Union and Lehman Brothers, Lehman Brothers Commercial Paper, SBC Warburg Dillon Read. A 300 million dollar senior secured credit facility between Swiss Bank Corporation, Lehman Commercial Paper and SBC Warburg Dillon, and these are pages -- these are right after the district court letter opinion where -- mentioning Grand Union as co-counsel, they're right in here.

And to my knowledge, somehow or the other, and I don't know the nuts and bolts of it, the three million went in and got sucked up into the Lehman vacuum cleaner. Now whether it went here, there or jumped around, like, you know, a piece of

popcorn or something on a hot griddle, I don't know because they won't tell me. CNS won't tell me. The State of New York won't bother. I haven't had any discovery per se. And as Mr. Waisman refers to my handwritten notes, I'm sorry I don't have a big staff, I've tried to pursue the information that I need to really prove my claim, rather than get close to my claim.

THE COURT: Okay. Well, I'm still trying to understand what your claim is. So let's understand first what your claim is and then understand whether or not you have any ability to prove it.

MR. KUNTZ: Thank you, Your Honor.

THE COURT: Is your claim a claim that is, in effect, a derivative of what happened in New Jersey before Judge Winfield?

MR. KUNTZ: No.

THE COURT: It's not based upon what happened in New Jersey?

MR. KUNTZ: No, it's what happened in Delaware.

THE COURT: What happened in Delaware?

MR. KUNTZ: Grand Union Company made a settlement with Grand Union -- well, let me back up.

Grand Union Company went into bankruptcy. Capital and Holding, the parents, were, sort of, out there and there was a lot of anger when it was determined that, for whatever reason, even though 700 million dollars had gone into Grand Union

Capital in the morning and gone out in the afternoon, Grand Union Capital didn't have promissory note, didn't have a cancelled check, they had no way to really become the major claimant in Grand Union Capital.

So a settlement was made and Grand Union Company was reorganized, the grocery store chain, and went on and filed bankruptcy a couple more times and now is liquidated and runs as C&S Wholesalers in New Hampshire.

Grand Union Capital and Grand Union Holdings never filed a plan of reorganization. There was never a confirmation of a plan, that was never filed. The cases were dismissed by Judge Walsh and the companies were liquidated or dissolved in Delaware without notice or distribution to the creditors. Twelve million dollars of assets that were reported, in my recollection, to the best of my information, twelve million dollars of intercompany assets in Grand Union Capital Corp went missing.

The only tail end of that money to ever show up was deposited by Grand Union Capital Corp with the New York State comptroller in Albany, and that's in my exhibit. That's -- out of twelve million dollars of assets, everything was gone and it all went to some office in Wayne, New Jersey run by Miller Hirsch & Tabak.

THE COURT: Mr. Kuntz --

MR. KUNTZ: Now the three million was separate from

that. Thank you, Your Honor.

THE COURT: Mr. Kuntz, you had, at some point, zero coupon notes issued by Grand Union Capital Corporation?

MR. KUNTZ: Yes, Your Honor.

THE COURT: And you had various claims evidenced by those notes, were those claims treated in each of the three bankruptcies?

MR. KUNTZ: No.

THE COURT: Did you have a claim in the Delaware bankruptcy?

MR. KUNTZ: The claims that were asserted on my behalf were asserted by Grand Union Capital's indentured trustees, not dissimilar to what's happening in this case. That is, there was a trustee. The trustee went forward before Judge Walsh in Grand Union Company. They approved the settlement and at the settlement hearing there was an oral modification that said Mr. Kuntz is not taking the deal and his notes are not cancelled and his indenture basically remain in full force and effect.

THE COURT: Is it correct that whatever claims you assert here those claims are predicated upon your historical ownership of the zero coupon notes that were issued by Grand Union Capital Corporation?

MR. KUNTZ: Yes, Your Honor.

THE COURT: Do you still have those notes?

MR. KUNTZ: Yes, Your Honor. Well, I have two

physical notes which my son Andrew has at my ex-wife's house in upstate New York, which is a long story. And the third is reflected by the stipulation which is in the exhibit with Judge Winfield, which actually went back into my account at Wells Fargo and then they lost it again, but that's another story. And I can produce those in time, but not today.

THE COURT: Do those notes represent claims against the three million dollar escrow fund?

MR. KUNTZ: I believe they do.

THE COURT: What's the basis for that belief?

MR. KUNTZ: That as the sole remaining -- as a creditor of Grand Union Capital Corp, that is the failure -- that is had Grand Union Capital put on a plan, no asset liquidation, whatever, I would have been wiped out. That would have been it twelve, fifteen years ago. But when they dismissed the bankruptcy cases without a plan and they dissolved the corporations in Delaware without notice or distribution to the creditors, that's all part of the scheme in the Martin Act.

I mean, if I was as clever as some of the lawyers here I might even have been able to make a reco but I'm not that ambitious or that smart. I just know that if there's -- if you have securities and the company that issues the securities takes off and all the money disappears and there's nothing except teeny little fragments on deposit in Albany, that's

basically pretty -- to me it pretty much indicates that there's a violation of the Martin Act. Because all through the documents these things are governed under New York law, not New Jersey law, not Delaware law, New York law and New York law is where the Martin Act resides and therefore, I think, that if statistically, as I said, the violation of the Martin Act is established. Legally I don't know because I don't have any information. I haven't seen any of the memos. For instance, there's no smoking gun, an e-mail from somebody to somebody saying let's do this; let's not put this before Judge Winfield she might give Kuntz the three million. That's my thought, was that Judge Winfield might have just given me the escrow account.

THE COURT: At what point do you allege that Lehman Commercial Paper did anything to your detriment?

MR. KUNTZ: I believe it would be reflected in the exhibit that they have to their motion, reflected in the letter from their co-counsel.

THE COURT: I'm not understanding that reference.

MR. KUNTZ: There's a letter --

THE COURT: What did they do that hurt you?

MR. KUNTZ: They knowingly took an escrow account, by circuitous routes, that they knew or should have known that I had a superior claim to and they denied it.

THE COURT: What was the amount of that claim? How

much of that three million dollar escrow represented anything that you were entitled to?

MR. KUNTZ: All of it.

THE COURT: Why?

MR. KUNTZ: Because my bonds exceed the amount of the escrow account.

THE COURT: And why did the three million dollar escrow account represent security for your bonds?

MR. KUNTZ: I didn't say security.

THE COURT: What gave you any entitlement to a nickel in that account?

MR. KUNTZ: Because the escrow account was set up to protect the controllers of Grand Union from violations of law, as said in their papers. And the Martin Act is a law to prevent the fraudulent sale of securities. If they sell 700 million dollars of securities and nobody gets paid, nobody gets paid, if I don't get paid then, say, Putnam funds sitting in Boston, Lutheran Brotherhood, they might come back and say gee, Solomon Brothers, Smith Barney, Mr. Buffett, where's our money? You can't sell -- I mean, that's what this case is all about, is securities law, bonds, stocks, this, that and the other.

In New York State, this is not the Bahamas as Your Honor's already expressed a distrust for or some third world country. You can't sell 700 million dollars worth of bonds across the stock market and nobody gets paid. In the old time

parlance of Victor Kurtz, that's a swindle and that's what it is.

THE COURT: Mr. Kuntz, I'm simply focused on a very, very narrow point.

MR. KUNTZ: I understand, Your Honor.

THE COURT: And my point is do you have a claim in this case?

MR. KUNTZ: Yes, Your Honor.

THE COURT: That's what I'm trying to understand. You're saying yes, I don't understand why you have a claim in this case. You haven't made that clear to me nor have you demonstrated an ability to prove that you have a claim. This is your chance to do just that.

MR. KUNTZ: Your Honor, I believe under the notice for the 9000 Rule notice, it's in the rules that if you're going to call witnesses there's got to be another hearing.

Now, I basically laid it out as best I can.

THE COURT: Are you going to call Warren Buffett?

MR. KUNTZ: I wrote a letter to him, you saw it.

THE COURT: I did see it.

MR. KUNTZ: I am not --

THE COURT: What does Warren Buffett have to do with --

MR. KUNTZ: He was the chairman of Solomon Brothers when they took the 700 million.

THE COURT: What does that have to do with whether you have a claim?

MR. KUNTZ: He has personal knowledge if it was a fraud or not.

THE COURT: What does that have to do with whether you have a claim against LCPI here?

MR. KUNTZ: Because if the Lehman Brothers -- if the escrow account was tainted by a violation of the Martin Act then my claim to the funds is superior to them as the creditor to Grand Unions. Proceeds of a crime, call it what you want. If there's a violation of the Martin Act then my rights to that fund is superior to them as a bread and butter lender.

THE COURT: Mr. Kuntz, do you want an evidentiary hearing?

MR. KUNTZ: If Your Honor wishes?

THE COURT: No.

MR. KUNTZ: I've asked for it.

THE COURT: I've asked, do you want an evidentiary hearing?

MR. KUNTZ: Yes, I do.

THE COURT: And what witnesses do you intend to call and what evidence --

MR. KUNTZ: I've already listed them.

THE COURT: -- and what evidence do you intend to offer?

MR. KUNTZ: I'm going to ask their testimony, what they know about Grand Union. I'm going to ask Mr. Dannenberg what about this letter here. I'm going to ask Mr. Basta the former partner did you guys cook up the deal to push away the escrow account? Why didn't you put it before Judge Winfield? You were there every week for two years, you had three, four hundred million dollars tied up with Lehman Brothers, your client, at the same time you were co-counsel. Why didn't you just simply go to Judge Winfield, say Judge Winfield can we take the escrow account? Kuntz is over there, he's all ticked off about this escrow account, can we have the money.

Did they do that? No, they didn't do it. They chose to assume the risk and in this case they never thought eleven years ago that Lehman Brothers, Lehman Brothers was the big, strong, 300 billion, you know, whatever, they never thought it would be here. I never have the opportunity to even get a recovery if Lehman hadn't filed.

THE COURT: Okay. I'm going to ask --

MR. KUNTZ: Thank you, Your Honor.

THE COURT: I'm going to ask debtor's counsel whether or not debtor's counsel has a position on the request made by Mr. Kuntz for an evidentiary hearing that would include a number of witnesses who so far have simply been asked to consider voluntarily appearing at such a hearing.

MR. WAISMAN: Your Honor, first of all, Mr. Kuntz has

not made out a prima facie claim. And even assuming everything he has said to this Court today and the paltry documentation he has submitted, even assuming it is all correct, true and accurate, it does not give a rise to a claim against LCPI or any of the debtors and there is no need and he has no right to an evidentiary hearing.

If we're going to entertain an evidentiary hearing, Your Honor asked him what do you -- what do you intend to present and everything he's already told us he intends to present is wholly irrelevant.

Your Honor saw his request for testimony was never properly served. He requested voluntary appearances here today. I don't see Mr. Buffett here; I don't see Jeff Tannenbaum or Paul Basta here today.

I think, if we spend a moment looking at the allegations it's absolutely clear that there is no basis for a claim. Mr. Kuntz obtained zero coupon notes from an entity called Grand Union Capital Corp, up here, okay, prior to the first case. That company went into the first case and was then dissolved. That's his only relationship. That's the only entity he ever had a claim against.

There's another entity, Grand Union Company. Grand Union Company puts money into the cash escrow in the first case. Kuntz objects to it, his objection's overruled, the escrow is created.

It goes through the second case. We then go into the third case. Mr. Kuntz has no standing in that case. He is not a creditor in that case.

Nevertheless, he makes a motion to modify the stay to access the escrow for the same reasons, the same arguments he's making here today, and his request -- his motion is denied. There's no record of an appeal. The decision is not reversed. It is final and binding. He has no right to the cash escrow. It's not issued by the same company he has a claim against. We hear allegations of Martin Act violations, he never prosecuted those. They don't give rise to a right to the escrow. At best, from what I hear from Mr. Kuntz, he has a claim that he should bring in federal or state court against MTH. But that doesn't give him a claim here. And Your Honor, we did submit the letter brief submitted to Judge Winfield and her order as an exhibit but if I may hand up a copy?

THE COURT: Sure.

MR. WAISMAN: This is the letter that Mr. Kuntz has repeated referred to in his remarks. On top is Judge Winfield's order denying the relief. The letter brief, by Raven Greenberg, outlines that Mr. Kuntz has filed a motion for relief from the automatic stay to permit him to take such steps that the Court may deem necessary and proper in order to secure a certain escrow account which was established under the first Grand Union Chapter 11 cases.

The letter goes through chapter and verse, everything we've discussed here today. Mr. Kuntz was a creditor of Capital Corporation, no other entity. Capital Corporation does not exist. The escrow was created in the first case pursuant to order of the court, he objected. His objection was overruled, that case was confirmed. And the money is then disbursed into the operating account of Grand Union Capital -- of Grand Union Company, an entity as to which he has no standing, he is not a creditor and he has no rights to the escrow.

The allegation that somehow there was a Martin Act violation prior to the first case, relating to Grand Union Capital Corporation and that gives him superior rights to an escrow by an unrelated entity for a specific purpose established pursuant to court order is outrageous. There is no basis for it. There isn't a single citation to statute or case authority that would give him any right to the escrow, let alone -- and let' get down to detail. It's not that he's -- he's saying he has superior rights to the escrow; the escrow was disbursed into an operating account, that cash was used in the operations of the business. Ultimately that entity was liquidated and the assets, pursuant to a confirmed plan, were distributed to creditors.

He is saying that the cash distributed to all of the creditors in that third case doesn't belong to those creditors,

it belongs to him.

There simply is no basis for a claim, even asserted. Kuntz was a creditor of Capital Corporation, an entity that's been dissolved.

THE COURT: Okay. Thank you.

MR. KUNTZ: Your Honor, if I may point out, the order that Mr. Waisman refers to has the second bankruptcy case, it's a 1998 case, it's not the 2000 case.

So what he says that happened in the third case really happened in the second case where Judge Winfield gave me my security back. It's right here. It's case 98-27912. The Raven Greenberg letter has got the 2000 case number 0039613. So in essence he's putting the second case order forward saying this is what happened in the third case. That's not the exhibit.

MR. WAISMAN: That's inaccurate, Your Honor. The order, on its face, says May 21, 2001.

MR. KUNTZ: I've never seen that order, Your Honor.

MR. WAISMAN: Here it is.

MR. KUNTZ: This is -- Your Honor --

MR. WAISMAN: It was submitted with our papers.

MR. KUNTZ: Your Honor, we're already well into -- now we're having an evidentiary hearing with a copy given to the Court, which I've never seen, but he just held it up. That's why I asked for the evidentiary hearing.

I don't know if the gentlemen, and it says clearly in my notice, I didn't give them a date to come along. I said I expected to have something later in the month. If Your Honor chooses to have an evidentiary hearing I will invite them to come. I'm not so foolish as to think that I can I can go around and subpoena Warren Buffett and Mr. Goodfriend and a partner in his firm and a former partner in his firm to come and testify. I'm going to invite them, if they're gentlemen they will come. If they're not gentlemen they won't come. Your Honor can draw your own conclusions.

THE COURT: Okay.

MR. KUNTZ: And I'm not trying to make this, like, a grand -- the last thing in the world I want to do was put Mr. Buffett's name on that but he happened to be the chairman of Solomon Brothers when they got the 700 million dollars.

THE COURT: Okay. I think I --

MR. KUNTZ: Thank you, Your Honor.

THE COURT: I think I've heard enough for the time being. I'm going to take this under advisement, including the request made by Mr. Kuntz for an evidentiary hearing. I'll note that one of the things that I'm going to be thinking about is whether any of the witnesses identified by Mr. Kuntz can offer credible and relevant testimony in reference to the fairly narrow issue which is before the Court, which is whether the objection to Mr. Kuntz' various proofs of claim should be

granted.

One of the disturbing aspects of this dispute is that it's so obviously does not relate directly to anything that goes on in this court in the LCPI case. Everything that is being described by Mr. Kuntz relates to what went on many years ago in the context of three separate bankruptcy cases involving the Grand Union Company.

I also note that I have repeatedly asked Mr. Kuntz to explain how he would intend to establish his claim that LCPI has liability in reference to whatever happened to the escrow account that was established in the context of the Grand Union cases and I don't have a very clear understanding as to what he would do other than attempt to demonstrate that there was some fundamental impropriety or illegality in connection with the original financing of Grand Union Capital Corporation and Grand Union Company.

Connecting such unsubstantiated allegations to the present bankruptcy case would be a challenge for the most skillful lawyer and is a particular challenge for a non-lawyer such as Mr. Kuntz. But I note that Mr. Kuntz has ample personal experience in representing himself and his own interests, not only in this bankruptcy case where he has appeared routinely, but in other cases as well.

Ordinarily I would urge a pro se litigant to consider retaining counsel in order to properly present legal arguments,

but Mr. Kuntz appears quite comfortable in court and seems perfectly prepared, on his own, to express himself. So I'm going to assume that even if I were to urge that he retain counsel he would suggest that that wasn't necessary or that he couldn't afford it. Do you wish to comment on that, Mr. Kuntz?

MR. KUNTZ: Your Honor could solve that. He could issue an order to show cause why the indentured trustees don't take my shoes. They're still the trustees. The U.S. Bank is already before the Court. HSBC is already before the Court. It wouldn't be very hard for their lawyers to roll into court and say, gee we're asleep at the switch, we didn't know. I mean, you know.

THE COURT: If you have any claims against your indentured trustee I'm sure you'll pursue them.

MR. KUNTZ: That, Your Honor, is a very succinct observation. That's my fall back position. Thank you.

THE COURT: All right. This is under advisement and I'm just going to ask if anybody else has anything more to say on this subject?

THE COURT: We're adjourned.

(Whereupon these proceedings were concluded at 12:19 p.m.)

I N D E X

R U L I N G S

I N D E X, cont'd

R U L I N G S

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib
Digitally signed by Lisa Bar-Leib
DN: cn=Lisa Bar-Leib, c=US
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LISA BAR-LEIB

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Date: October 28, 2010